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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,618	07/17/2003	George W. Muller	1129-178.111111 US	2627

7590 04/28/2005

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EXAMINER

ANDERSON, REBECCA L

ART UNIT PAPER NUMBER

1626

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/622,618

Applicant(s)

MULLER ET AL.

Examiner

Rebecca L. Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,12,16-18,23,27-29,34 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 12, 16-18, 23, 27-29, 34 and 38-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1, 3-7, 12, 16-18, 23, 27-29, 34 and 38-40 are currently pending in the instant application. Claims 1, 3-7, 12, 16-18, 23, 27-29, 34 and 38-40 are rejected.

#### ***Response to Amendment and Remarks***

Applicants' amendment and arguments filed 10 February 2005 have overcome the objection to the claim 1 as containing a minor informality and have overcome the objection to claims 1-5, 7, 12, 16-18, 23 and 27-29 as containing non-elected subject matter. Applicant is correct that the compound 3,3-bis-(3-methoxyphenyl)-2-propenenitrile of Groundwater et al. of the 35 USC 102(b) rejection reads on the compound wherein R1 is methyl, R3 is methoxyphenyl, X is O and R2 is hydrogen. Applicants' amendment to delete hydrogen from the definition of R2 in the claims has overcome the 35 USC 102(b) rejection of the claims. It is noted that applicant did not address the substance of the double patenting rejection and requested that the rejection be held in abeyance until the claims are deemed otherwise allowable. The double patenting rejection of claims 1, 3-7, 12, 16-18, 23, 27-29, 34 and 38-40 is therefore maintained and is as follows.

#### ***Maintained Double Patenting Rejection***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225

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USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 7, 18 and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 5,929,117. Although the conflicting claims are not identical, they are not patentably distinct from each other because applicants instant claims 1-5, 7, 18 and 29 claim compounds wherein **R1** is selected from the group consisting of any alkyl of up to 10 carbon atoms, any monocycloalkyl of up to 10 carbon atoms, any polycycloalkyl of up to 10 carbon atoms, and any benzocyclic alkyl of up to 10 carbon atoms; **R2** is nitro, cyano, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl, acetox, carboxy, hydroxy, amino, lower alkyl, lower alkoy, or halo; **R3** is (i) phenyl unsubstituted or substituted with 1 or more substituents selected independently from the group consisting of a nitro, cyano, a halo, a trifluoromethyl, a carbethoxy, a carbomethoxy, a carbopropoxy, an acetyl, a carbamoyl, a carbamoyl substituted with an

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alkyl of 1 to 3 carbon atoms, an acetoxy, a carboxy, a hydroxy, an amino, an amino substituted with an alkyl of 1 to 4 carbon atoms, an alkyl or cycloalkyl of 1 to 10 carbon atoms, and an alkoxy or cycloalkoxy of 1 to 10 carbon atoms, or (ii) a phenyl substituted with 1 or more substituents each selected independently from the group consisting of an alkylidenemethyl of up to 10 carbon atoms, a cycloalkylidenemethyl of up to 10 carbon atoms, a phenyl, and a methylenedioxy; and X is -O- (applicants claims 1 and 2, and claim 18), wherein R<sub>2</sub> is nitro, cyano, trifluoromethyl, amino, lower alkyl, lower alkoxy or halo (claim 3), wherein R<sub>1</sub> is alkyl of up to 10 carbon atoms and R<sub>2</sub> is trifluoromethyl, lower alkyl or lower alkoxy (claim 4 and claim 29), wherein R<sub>1</sub> is methyl or ethyl and R<sub>2</sub> is methoxy or ethoxy (claim 5) and wherein the compound is, for example, 3,3-bis-(3,4-dimethoxyphenyl)acrylonitrile and 3,3-bis-(3-ethoxy-4-methoxyphenyl)acrylonitrile (claim 7) are anticipated by claim 6 of US Patent No. 5,929,117 which discloses the compounds of, for example, 3,3-bis-(3,4-dimethoxyphenyl)acrylonitrile; 3,3-bis-(3-ethoxy-4-methoxyphenyl)acrylonitrile; 3-(3-propoxy-4-methoxyphenyl)-3-phenylacrylonitrile; 3-(3-ethoxy-4-methoxyphenyl)-3-phenylacrylonitrile; 3,3-bis-(3-cyclopentoxy-4-methoxyphenyl)acrylonitrile; 3-(3-cyclopentoxy-4-methoxyphenyl)-3-phenylacrylonitrile and 3-(3,4-dimethoxyphenyl)-3-phenylacrylonitrile.

Claims 1-7, 16-18, 27-29 and 38-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 6 and 11 of U.S. Patent No. 5,929,117. Although the conflicting claims are not identical, they are not patentably distinct from each other because applicants instant claims 1-5,

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7, 18 and 29 are compound claims wherein **R1** is selected from the group consisting of any alkyl of up to 10 carbon atoms, any monocycloalkyl of up to 10 carbon atoms, any polycycloalkyl of up to 10 carbon atoms, and any benzocyclic alkyl of up to 10 carbon atoms; **R2** is nitro, cyano, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl, acetox, carboxy, hydroxy, amino, lower alkyl, lower alkoxy, or halo; **R3** is (i) phenyl unsubstituted or substituted with 1 or more substituents selected independently from the group consisting of a nitro, cyano, a halo, a trifluoromethyl, a carbethoxy, a carbomethoxy, a carbopropoxy, an acetyl, a carbamoyl, a carbamoyl substituted with an alkyl of 1 to 3 carbon atoms, an acetox, a carboxy, a hydroxy, an amino, an amino substituted with an alkyl of 1 to 4 carbon atoms, an alkyl or cycloalkyl of 1 to 10 carbon atoms, and an alkoxy or cycloalkoxy of 1 to 10 carbon atoms, or (ii) a phenyl substituted with 1 or more substituents each selected independently from the group consisting of an alkylidenemethyl of up to 10 carbon atoms, a cycloalkylidenemethyl of up to 10 carbon atoms, a phenyl, and a methylenedioxy; and **X** is -O- (applicant's claims 1 and 2, in Z form only=claim 17, in E form only=claim 16 in racemate form=claim 18), wherein **R2** is nitro, cyano, trifluoromethyl, amino, lower alkyl, lower alkoxy or halo (claim 3), wherein **R1** is alkyl of up to 10 carbon atoms and **R2** is trifluoromethyl, lower alkyl or lower alkoxy (claim 4, in E form=claim 27, in Z form=claim 28, in racemate form=claim 29), wherein **R1** is methyl or ethyl and **R2** is methoxy or ethoxy (claim 5), wherein the compound is 3-(3,4-dimethoxyphenyl)-3-(3',5'-dimethoxyphenyl)acrylonitrile (claim 6 in E form=claim 38, in Z form=claim 39 in racemate form=claim 40), wherein the compound is, for example, 3,3-bis-(3-4-

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dimethoxyphenyl)acrylonitrile and 3,3-bis-(3-ethoxy-4-methoxyphenyl)acrylonitrile (claim 7).

***Determining the scope and contents of the conflicting US Patent***

Claims 1 and 11 of US Patent No. 5, 929,117 claims a compound wherein X can be -O- and R1 is alkyl of up to 10 carbon atoms, monocycloalkyl of up to 10 carbon atoms, polycycloalkyl of up to 10 carbon atoms, or benzocyclic alkyl of up to 10 carbon atoms; R2 is hydrogen, nitro, cyano, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl, acetoxo, carboxy, hydroxy, amino, lower alkyl, lower alkylidenemethyl, lower alkoxy, or halo, R3 is (i) phenyl or naphthyl, unsubstituted or substituted with 1 or more substituents each selected independently from nitro, cyano, halo, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl or carbamoyl substituted with alkyl of 1 to 3 carbon atoms, acetoxo, carboxy, hydroxy, amino, amino substituted with an alkyl of 1 to 5 carbon atoms, alkyl of up to 10 carbon atoms, cycloalkyl of up to 10 carbon atoms, alkylidenemethyl of up to 10 carbon atoms, cycloalkylidenemethyl of up to 10 carbon atoms, phenyl or methylenedioxy; or (ii) cycloalkyl of 4-10 carbon atoms, unsubstituted or substituted with 1 or more substituents each selected independently from the group consisting of nitro, cyano, halo, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl, acetoxo, carboxy, hydroxy, amino, substituted amino, alkyl of 1 to 10 carbon atoms, alkoxy of 1 to 10 carbon atoms, and phenyl; each of R4 and R5 taken individually is hydrogen or R4 and R5 taken together are a carbon-carbon bond; Y is -COZ, C=N, or lower alkyl of 1 to 5 carbon atoms, Z is -OH, -NR6R6, -R7, or -OR7; R6 is hydrogen or

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lower alkyl; and R7 is alkyl or benzyl. Claim 2 claims the compound of the formula wherein R4 and R5 form a double bond, Y is CN and R3 is (i) phenyl or naphthyl, unsubstituted or substituted with 1 or more substituents each selected independently from nitro, cyano, halo, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl or carbamoyl substituted with alkyl of 1 to 3 carbon atoms, acetoxyl, carboxyl, hydroxyl, amino, amino substituted with an alkyl of 1 to 5 carbon atoms, alkyl of 1 to 10 carbon atoms, alkoxy or cycloalkoxy of 1 to 10 carbon atoms; or (ii) cycloalkyl of 4-10 carbon atoms, unsubstituted or substituted with 1 or more substituents each selected independently from the group consisting of nitro, cyano, halo, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl, acetoxyl, carboxyl, hydroxyl, amino, substituted amino, alkyl of 1 to 10 carbon atoms, alkoxy of 1 to 10 carbon atoms, and phenyl. Claim 6 claims specific species, for example, 3,3-bis-(3,4-dimethoxyphenyl)acrylonitrile; 3,3-bis-(3-ethoxy-4-methoxyphenyl)acrylonitrile; 3-(3-propoxy-4-methoxyphenyl)-3-phenylacrylonitrile; 3-(3-ethoxy-4-methoxyphenyl)-3-phenylacrylonitrile; 3,3-bis-(3-cyclopentoxyl-4-methoxyphenyl)acrylonitrile; 3-(3-cyclopentoxyl-4-methoxyphenyl)-3-phenylacrylonitrile and 3-(3,4-dimethoxyphenyl)-3-phenylacrylonitrile.

***Ascertaining the differences between the conflicting US Patent and the claims at issue***

The difference between applicants' instant claims and the claims 1,2, 6 and 11 of US Patent No. 5,929,117 is that patent claim 1 claims compounds that generically overlap with applicants instant compounds as claimed. However, patent claims 2 and 11, which are dependent on patent claim 1, disclose preferences towards wherein X is –



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O- (patent claim 11) R4 and R5 are a double bond and Y is CN (patent claim 2) and patent claim 6, dependent on patent claim 2, claims species which are encompassed by applicants instant compound of the formula (I), for example 3,3-bis-(3-4-dimethoxyphenyl)acrylonitrile and 3,3-bis-(3-ethoxy-4-methoxyphenyl)acrylonitrile and example 10 of the patent, column 16 discloses the compound, 3-(3,4-dimethoxyphenyl)-3-(3',5'-dimethoxyphenyl)acrylonitrile, which corresponds to applicants instant further elected compound. Also, column 9 discloses that the compound invention encompasses and is preferred as the racemate isomers, (Z) isomer and the (E) isomer and discloses methods of separating the (Z) and (E) isomer from the racemate isomer

***Resolving the level of ordinary skill in the pertinent art***

However, it would have been obvious to one of ordinary skill in the art at the time of the invention to prepare compounds as instantly claimed when faced with claims 1-2, 6 and 11 of US Patent No. 5,929,117 since the claims are directed to products which generically overlap with applicants instantly claimed compounds (see patent claims 1-2 and 11), since claim 2 discloses preferences towards R4 and R5 forming a double bond and Y being CN, since claim 11 discloses preferences towards X being -O-, since claim 6 discloses further preferences to specific species within applicants instantly claimed products, for example, 3,3-bis-(3-4-dimethoxyphenyl)acrylonitrile and 3,3-bis-(3-ethoxy-4-methoxyphenyl) acrylonitrile, since example 10 of the patent, column 16 is discloses the compound 3-(3,4-dimethoxyphenyl)-3-(3',5'-dimethoxyphenyl)acrylonitrile, which corresponds to applicants instant further elected compound and since column 12 discloses that the compound invention is in the form of the racemate isomer, (Z) and (E)

form isomers and methods of separation. The motivation behind the obvious type double patenting would be to prepare other useful compounds for the treatment of conditions such as septic shock, cancer, autoimmune diseases, etc.

Claims 12, 23 and 34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of U.S. Patent No. 5,929,117. Although the conflicting claims are not identical, they are not patentably distinct from each other because applicants instant claims 12, 23 and 34 are pharmaceutical composition claims which comprise the compounds of the formula (I) wherein **R1** is selected from the group consisting of any alkyl of up to 10 carbon atoms, any monocycloalkyl of up to 10 carbon atoms, any polycycloalkyl of up to 10 carbon atoms, and any benzocyclic alkyl of up to 10 carbon atoms;

**R2** is nitro, cyano, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl, acetox, carboxy, hydroxy, amino, lower alkyl, lower alkoxy, or halo;

**R3** is (i) phenyl unsubstituted or substituted with 1 or more substituents selected independently from the group consisting of a nitro, cyano, a halo, a trifluoromethyl, a carbethoxy, a carbomethoxy, a carbopropoxy, an acetyl, a carbamoyl, a carbamoyl substituted with an alkyl of 1 to 3 carbon atoms, an acetox, a carboxy, a hydroxy, an amino, an amino substituted with an alkyl of 1 to 4 carbon atoms, an alkyl or cycloalkyl of 1 to 10 carbon atoms, and an alkoxy or cycloalkoxy of 1 to 10 carbon atoms, or (ii) a phenyl substituted with 1 or more substituents each selected independently from the group consisting of an alkylidenemethyl of up to 10 carbon atoms, a cycloalkylidenemethyl of up to 10 carbon atoms, a phenyl, and a methylenedioxy; and

X is -O- (applicants claim 1), wherein R1 is alkyl of up to 10 carbon atoms, R2 is trifluoromethyl, loweralkyl or lower alkoxy (claim 4) and wherein the compound is 3-(3,4-dimethoxy phenyl)-3-(3',5'-dimethoxyphenyl)acrylonitrile (claim 6).

***Determining the scope and contents of the conflicting US Patent.***

Claim 5 of US Patent No. 5, 929,117 claims a pharmaceutical composition comprising the compound of the patent claim 1 wherein X can be -O- and R1 is alkyl of up to 10 carbon atoms, nonocycloalkyl of up to 10 carbon atoms, polycycloalkyl of up to 10 carbon atoms, or benzocyclic alkyl of up to 10 carbon atoms; R2 is hydrogen, nitro, cyano, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl, acetox, carboxy, hydroxy, amino, lower alkyl, lower alkylidenemethyl, lower alkoxy, or halo, R3 is (i) phenyl or naphthyl, unsubstituted or substituted with 1 or more substituents each selected independently from nitro, cyano, halo, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl or carbamoyl substituted with alkyl of 1 to 3 carbon atoms, acetox, carboxy, hydroxy, amino, amino substituted with an alkyl of 1 to 5 carbon atoms, alkyl of up to 10 carbon atoms, cycloalkyl of up to 10 carbon atoms, alkylidenemethyl of up to 10 carbon atoms, cycloalkylidenemethyl of up to 10 carbon atoms, phenyl or methylenedioxy; or (ii) cycloalkyl of 4-10 carbon atoms, unsubstituted or substituted with 1 or more substituents each selected independently from the group consisting of nitro, cyano, halo, trifluoromethyl, carbethoxy, carbomethoxy, carbopropoxy, acetyl, carbamoyl, acetox, carboxy, hydroxy, amino, substituted amino, alkyl of 1 to 10 carbon atoms, alkoxy of 1 to 10 carbon atoms, and phenyl; each of R4 and R5 taken individually is hydrogen or R4 and

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R5 taken together are a carbon-carbon bond; Y is  $-\text{COZ}$ ,  $\text{C}=\text{N}$ , or lower alkyl of 1 to 5 carbon atoms, Z is  $-\text{OH}$ ,  $-\text{NR}_6\text{R}_6$ ,  $-\text{R}_7$ , or  $-\text{OR}_7$ ;  $\text{R}_6$  is hydrogen or lower alkyl; and  $\text{R}_7$  is alkyl or benzyl.

***Ascertaining the differences between the conflicting US Patent and the claims at issue***

The difference between the claims at issue and the patent claims of US Patent No. 5,929, 117 is that patent claim 5 is dependent on patent claim 1, which claims compounds that generically overlap with applicants instant compounds found in the pharmaceutical compositions. However, patent claims 2 and 11, which are dependent on patent claim 1, disclose preferences towards wherein X is  $-\text{O}-$  (patent claim 11)  $\text{R}_4$  and  $\text{R}_5$  are a double bond and Y is CN (patent claim 2) and patent claim 6, dependent on patent claim 2, claims species which are encompassed by applicants compound of the formula (I), for example 3,3-bis-(3-4-dimethoxyphenyl)acrylonitrile and 3,3-bis-(3-ethoxy-4-methoxyphenyl)acrylonitrile and example 10 of the patent, column 16 discloses the compound, 3-(3,4-dimethoxyphenyl)-3-(3',5'-dimethoxyphenyl)acrylonitrile, which corresponds to applicants instant further elected compound.

***Resolving the level of ordinary skill in the pertinent art***

However, it would have been obvious to one of ordinary skill in the art at the time of the invention to prepare pharmaceutical compositions as instantly claimed when faced with claim 5 of US Patent No. 5,929,117 since the claim is directed to pharmaceutical compositions which comprise compounds which generically overlap with applicants instant compounds of the formula (I), see patent claims 1 and 2, and since the claims provide preferences towards applicants instant formula (I) wherein X is  $-\text{O}-$  (patent claim 11)  $\text{R}_4$  and  $\text{R}_5$  are a double bond and Y is CN (patent claim 2) and

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furthermore, since claim 6 claims provides a further preference for specific species which are encompassed by applicants instant formula (I), for example 3,3-bis-(3-4-dimethoxyphenyl)acrylonitrile and 3,3-bis-(3-ethoxy-4-methoxyphenyl)acrylonitrile and since example 10 of the patent, column 16, a preference is disclosed for applicants further elected compound 3-(3,4-dimethoxyphenyl)-3-(3',5'-dimethoxyphenyl)acrylonitrile. The motivation behind the obvious type double patenting would be to prepare additional, useful pharmaceutical compositions for the treatment of conditions such as septic shock, cancer, autoimmune diseases, etc.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rebecca L. Anderson whose telephone number is (571)

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272-0696. Mrs. Anderson can normally be reached Monday through Friday 5:30AM to 2:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699.

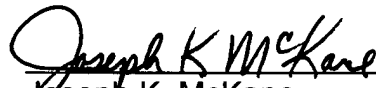
The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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4/21/05



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